

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

**RUSS GODFREY and  
NATALIE GODFREY,**

**Plaintiffs,**

**CSAA FIRE & CASUALTY  
INSURANCE COMPANY,  
a foreign corporation,**

**Defendant.**

**Case No. 19-CV-329-JD**

**PARTIES' JOINT SUPPLEMENT TO**  
**JOINT MOTION TO CONTINUE TRIAL SETTING**

Pursuant to the Court’s request for Supplemental Briefing [Dkt. No. 107], the Parties state as follows:

1. General Order No. 98-4 contemplates the scenario “[w]hen an attorney is scheduled for a day certain by trial calendar, special setting or court order to appear in two or more courts.” There were no conflicting dates when the *Mather* trial and *Godfrey* trials were set. The conflict did not become clear until today. However, the District Court of Tulsa County set the *Mather* case for trial on March 2, 2020, following the conclusion of a conference call on October 15, 2019, with Keith Givens for Plaintiff and Jerry Pignato for Defendant, who are both primary counsel in the instant litigation. A copy of the docket sheet reflecting the minute entry (no separate order) setting the jury trial date for the *Mather* is attached as Ex. 1.

2. Attorneys of record for Plaintiffs in the *Mather* case are: Steve Mansell and Keith Givens. Additional attorneys assisting with various aspects of the *Mather* case

include Mark Engel and Kenneth Cole. Mark Engel and Keith Givens are co-lead counsel of the instant litigation. [Dkt. No. 86]. Keith Givens has been the attorney most involved in both *Mather* and the instant litigation.

3. Attorneys of record for Defendant in the *Mather* case are: Jerry Pignato, Bruce Robertson and Josh Hefner. Additional attorneys assisting with various aspects of the *Mather* case include Matthew C. Kane. Jerry Pignato is lead counsel in the instant litigation. Jerry Pignato has been the attorney most involved in *Mather* and the instant litigation.

4. Attorneys for Plaintiffs and Defendant are currently in trial in Tulsa County on the *Mather* case. As the trial in that case is currently ongoing, the Parties believe it has priority. Both cases are civil matters. Both cases involve jury trials. Both are trial settings. The *Mather* case was filed in 2017; the instant case in 2019. The scheduling order in the instant case setting the trial date was filed on July 1, 2019. Rescheduling a trial already in progress is extremely problematic, as the jury has already been seated and heard a significant portion of the case. Parties are currently in the courthouse, and witnesses prepared to be called to the stand. Due to various lengthy unanticipated procedural matters that occurred on March 4, 2020, the trial is taking longer than the parties' counsel reasonably anticipated.

5. Attorneys who will be present at counsel table for the instant trial are Mark Engel and Keith Givens for Plaintiffs and Jerry Pignato and Matt Kane for Defendants.

6. The undersigned, respectively representing the interests of each of the parties, certify the following:

- a. The matters cannot be adequately handled, and the client's interest adequately protected, by other counsel for the party in the action or by other attorneys in lead counsel's firm due to the late emergence of the conflict.
  - b. The parties have complied with the General Order, in so far as the General Order is applicable in the instant matter; nevertheless, the parties are unable to resolve the conflicts, again given the late emergence of the conflict.
  - c. The parties propose a continuance of the federal trial given the current ongoing nature of the state litigation. The parties acknowledge that the federal trial was set first. However, there was no conflict at that time. Moreover, the rule does not contemplate the situation where an instant trial is in progress when another is set to begin.
7. The General Order specifically provides that “[n]othing in the guidelines is intended to prevent courts from voluntarily yielding a favorable scheduling position...in an effort to lessen the impact of conflicts and continuances on all courts.” As stated above, the parties will be significantly and adversely impacted and prejudiced if their primary counsel is not permitted to attend trial.

For the reasons set forth herein and in the Joint Motion for Continuance of Trial Setting, the Parties respectfully request the Court move the current trial setting.

s/ Kenneth G. Cole

*(signed by filing attorney with permission of non-filing attorney)*

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s/Matthew C. Kane

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